

# COUNTER MEMORIAL

OF

SUNDRY CITIZENS OF THE DISTRICT OF COLUMBIA,

PRAYING

*That a Charter may be granted by Congress,*

TO ENABLE THEM TO INSTITUTE

**A Medical College, &c.**

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FEBRUARY 20, 1826.

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1826.



## MEMORIAL.

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*To the Honorable the Senate and House of Representatives of the United States of America in Congress assembled:*

The memorial of the citizens of the District of Columbia, praying for a charter for a Medical College, respectfully represent: That your memorialists have read with surprise a memorial, presented to your honorable Body from the Chairman and Dean, in behalf of the so styled "Professors of the Medical Department of the Columbian College," in opposition to the act of incorporation reported by a Committee of the Senate, wherein are stated various reasons why the prayer of your memorialists should be rejected: That, viewing those reasons as insufficient, your memorialists request the privilege of being permitted to examine and discuss them.

The first point worthy of remark is, that the memorial comes not from the constituted organs of the Columbian College, its "Faculty," but from individuals assuming a style and character not recognized by its charter. But, conceding the fact that those individuals are vested by the "Faculty" of the Columbian College with the power to represent that institution before the Senate, your memorialists shall proceed to examine into the merits of their opposition to the incorporation in question.

It must be obvious, that the very foundation of the right claimed by the Columbian College, in their memorial, rests upon the assumption, that a medical franchise has already been imparted by the Congress of the United States to that institution; and it, therefore, becomes a subject of primary importance to investigate the merits of that pretension. And here your memorialists confidently assert, that, after the most deliberate and full examination into its charter, they can find no warrant for such an assumption. What, they ask, is the style of that institution? and what are the objects set forth in its charter? It is styled and constituted a *College*, not a *University*. This latter style and constitution is deemed essential to the imparting of the medical franchise, in the absence from a charter of any special and express provisions, designed to confer such franchise. Without detaining the Senate with any minute philological disquisition, your memorialists will content themselves with asserting that the terms *University* and *College* have received, from the most approved philologists, and from common usage, a precise but distinct signification. The term and style *University*, in a charter, by itself, and by the mere force of the term, conferring the most unlimited power of granting, as well all honorary degrees, as professional privileges; while the term and style

*College*, so far as the import of the term has weight, and, in the absence of any special provisions in the charter superinducing more ample powers, confines and limits the institution to the mere franchise of conferring honorary academical degrees in the liberal arts and sciences. This distinction between the terms "University" and "College," will be presently shown to be sustained by the Congress of the United States.

Now, let the charter of the Columbian College be examined, to discover whether it contain any express delegation of powers and faculties controlling and extending the limited import of its style and title. The enacting clause of the act erects and establishes, in the District of Columbia, a "College for the sole and exclusive purpose of educating youth in the English, learned, and foreign languages; the liberal arts and sciences, and literature," &c.; and, in the 6th section, the Faculty of the College has conferred upon it the following power, to wit: "of granting and conferring, &c., such degrees in the liberal arts and sciences, to such persons, &c., as are usually granted and conferred in Colleges, and to grant to such graduates, diplomas or certificates, to authenticate and perpetuate the memory of such graduation." Thus it is seen that the power is confined to the conferring *such degrees, in the liberal arts and sciences, as are usually granted in Colleges*, and the object of conferring them is, *to authenticate and perpetuate the memory of such graduation*. Terms, both in the designation of the subjects to which they apply, and in the language used in relation to the purpose of their authentication, peculiarly adapted and evidently referable to mere *honorary collegiate degrees*, and not to *professional privileges*. That this construction is correct, and that the terms and phrases above quoted are all significant and important, is confirmed by the authority of Congress itself, in the act of the first of March, 1815, entitled "An act concerning the College of Georgetown, in the District of Columbia." By reference to that act, it will be seen that the President and Directors of the Georgetown College are empowered "to admit any of the students belonging to said College, or other persons meriting academical honors, to any degree in the faculties, arts, sciences, and liberal professions, to which persons are usually admitted in other Colleges or Universities of the United States, and to issue diplomas or certificates, &c. to testify the admission to such degrees." Can it be contended that the variance in the terms used in those laws is immaterial? That the additional terms *faculties, liberal professions, and Universities*, are insignificant and nugatory, and confer no additional powers? Such a construction would be as repugnant to common sense and reason, as disrespectful to the enlightened wisdom of the Legislature by which they were used. It is manifest that, whatever powers the Congress designed to impart to the Georgetown College, it did not enter into their contemplation to confer equal powers upon the Columbian College. And, if the former institution, with more ample powers, have not deemed it expedient to exercise those faculties, nor just to oppose the imparting them to an appropriate Institution, with what propriety, with what justice, can the Columbian College urge its more questionable claim?

The Georgetown College was endowed and founded by virtue of a law of Maryland, of 1797, ch. 40, and placed under the direction and government of the Corporation of the Roman Catholic Clergymen of that State. The powers and faculties above enumerated, were conferred upon it by the aforesaid Act of Congress, in 1815, several years before the incorporation of the Columbian College. It results, then, inevitably, that, if the views above stated be correct, all the arguments used by those Professors who claim to represent the latter Institution before the Senate, are most signally at variance with, and destructive of, the pretensions they advance. Assuming that they themselves constitute an incorporation with the medical franchise, they contend that the mere fact of the existence of such an incorporation, is a conclusive reason against chartering another institution with a similar faculty. But it is proved that, before the incorporation of their College, there did exist another, chartered by Congress, with more ample powers. Now, either the Congress which gave them their charter did not acquiesce in the justice of this conclusion, or it never designed that their charter should give them this franchise. How can those "Professors" extricate themselves from this dilemma? With what consistency and fairness can they urge such an argument? They have either obtained from Congress a franchise in direct opposition to the principles of justice and expediency which they now invoke, or they stand in the still more exceptionable character of urging those principles to defeat the fair and legal acquisition of a similar franchise on the part of others, which they themselves have usurped. It results most obviously, that, if the arguments of those "Professors" have any weight, they must have operated when their charter was under discussion, if not to prevent altogether the incorporation of their College, certainly to deprive them of the franchise of conferring medical degrees.

But your memorialists conceive that it is now apparent that the Columbian College possesses no such franchise, and they respectfully urge that the attempt to exercise such a power, on the part of that Institution, together with the less questionable but unasserted right on the part of another Institution of this District, furnish most cogent reasons why the Congress of the United States, in providing for the exigencies of the District, should establish a Medical Institution, with undoubted powers to effect this important object, and which would thus be enabled to combine the united exertions and earnest co-operations of the best medical talents of this community.

To establish their claim to the exclusive consideration of Congress, "The Professors of the Medical Department of the Columbian College" have urged, with imposing emphasis, the personal responsibilities and expenses they have incurred, and the success with which they have filled the *professorships* from the medical faculty of the District. In answer to the first suggestion, your memorialists would briefly reply, that those responsibilities and expenses are contingent to all such enterprises, when not endowed by the Government or other benefactors; and are such as your memorialists, if permitted by Congress, are ready and willing to incur, to a much greater extent, and,



they modestly hope, to a more effectual purpose than they have yet witnessed on the part of those who claim a monopoly. But your memorialists cannot forbear to advert to the language used by these "Professors," in their memorial, when they say, "The trustees conferred on the professors no other assistance than that, essentially resulting from the creation of the school—the power of conferring degrees." And if the trustees have conferred such a power upon those "Professors of the Medical Department of the Columbian College," in what part of their charter to they find a warrant for this delegation of power? The only power to confer degrees, is by the first section of their charter, vested in the "President, professors, and tutors, or a majority of them, and styled 'the Faculty of the College,' by, and with, the approbation and consent of a board of the trustees, signified by their mandamus." If, then, as is asserted by those "Professors of the Medical Department," they have been created with such a grant of power, the corporation has transcended its chartered limits: for, "*delegatus non potest delegare*," their creation has been illegal, and their acts and degrees are irregular and void, even conceding the principle, the opposite of which has been proved, that the Corporation itself, acting in conformity with its charter, has the power to confer medical degrees.

But it must also be apparent, from the history of this "medical school," as given by its professors, from its location in this city, apart from, irresponsible to, and with no regular nutriment or support from the parent Institution, that it is a mere excrescence on that body; a carnal adoption, and not a legitimate member of the family.

In answer to the second suggestion, respecting the abilities of the "Professors of the Medical Department," which they urge as *adequate*, and as "presenting a desirable subject of inquiry," your memorialists beg leave to decline any such inquiry, both as unnecessary and invidious. They are willing to admit the fact of their being "adequate," upon the authority of the averment of the professors themselves, until time shall have tested its correctness; well knowing, that, in the present advancement of knowledge, and facilities for its dissemination, such a fact cannot long remain the subject of doubt or question. But, your memorialists may be permitted to ask, why, with this confidence that they have elicited adequate abilities, should the "Professors" oppose and dread competition? Why seek from the Legislature a preference and monopoly which their abilities and talents are adequate to secure?

But the "Professors" have not confined their views to the intrinsic merits of the case, but have sought to fortify their opposition by precedents and examples, drawn from the history of similar institutions, in other States. Your memorialists will be excused for making a few remarks upon this part of the memorial.

The first case referred to by the "Professors," is that presented by the application in behalf of Jefferson College to the Legislature of Pennsylvania, for an act of incorporation for a medical department of that College, in the city of Philadelphia. This is a most unfortu-

nate reference, on the part of those "Professors:" for, in the first place, no decision has been made on the application—the controversy is yet pending: so that the case does not yet constitute a precedent of any kind. In the next place, if the claim of Jefferson College be unfounded, as is contended by the Professors, the only analogy found in it, is fatal to their pretensions: for the claim, on the part of the Jefferson College, is to be permitted to do, *by law*, precisely what the Columbian College has undertaken to do, *without law*. That is, to establish a medical department in a city where it is not itself located, and then to exercise a monopoly—a monopoly, in the latter case, entirely exclusive, in the former case, concurrently with another institution. But this case establishes, also, another fact, that the mere act of incorporating a College does not, *per se*, confer on it the medical franchise, and much less of planting its medical departments wherever it may please, and there asserting for them a monopoly.

But your memorialists have a general answer to all those precedents, which have been cited to sustain this monopoly, claimed by the Columbian College. In the first place, the argument assumes the proposition, which has been effectually disproved, that the franchise in question, has been imparted to the Columbian College. Now, all the cases referred to, in Philadelphia, New York, and Boston, where new medical schools were sought to be chartered, there existed already similar institutions, regularly incorporated, and in the exercise of an unquestioned medical franchise.

In the next place, those original institutions had been long established, amply endowed, and in successful operation, under the auspices of the first medical talents of the Nation; vast sums had been expended in their buildings, and in the accumulation of books, apparatus, &c. and in all those auxiliary establishments and institutions necessary to secure their efficiency and success. Their reputation had been extended throughout the country; and they were susceptible of a developement, adequate to the exigencies of the times. To such institutions, whose prosperity was so essentially connected with the pride, the prejudices, or the well-being of their respective States, the reasons, urged by the "Professors," might readily be admitted to apply, and they might well be supposed to find countenance with their parent Governments. But what analogy can be found in the history of those flourishing institutions, and that of the infant establishment, (not of Herculean birth) which raises its feeble arm to arrest the march of human improvement? Even if it should fail to establish the legitimacy of its birth, let it point to the triumphs of its genius. Let it point to the costly and magnificent edifices and establishments devoted to the medical science which it has founded; let it show the physical and intellectual treasures it has accumulated; let it number the bright array of its Rushes, its Wisters, Physics, Chapmans, Hossacks, and Warrens, as the evidence of its past, and the guarantee of its future usefulness. If it can do none of these things, as, from its recent establishment, it may, without reproach, be supposed incapable, with what consistency can it urge arguments and reasons, only applicable and appropriate when advanced by those

whose actual condition justified such pretensions? In the language of the "Professors," themselves, their medical school is "barely emerging from an inceptive state;" and while they are compelled, by truth, to forego all claims from past services, or present capacity, they draw largely upon our faith and credulity for the prospective glories and usefulness of their institution. In fact, the school is a mere experiment; and, from aught that it has yet effected, it would be giving our minds to vain and flattering illusions to augur very favorably of its future prospects.

It is doubtless true that some expenditures have been made by the "Professors;" but they have been barely sufficient to give their school "a local habitation and a name:" but neither in their extent, nor in the sacrifices incurred, do they constitute any claim for the privilege of a monopoly. It is, in fact, a monopoly the "Professors" ask: for, though they may discard the odious term, they seek the still more odious privilege.

In conclusion, your memorialists will state, that they have long been of opinion that the exigencies of the District required a medical college upon an extended and liberal basis, opening its portals to invite, as well the professional talents of this District, as of the nation at large. Their project has been deliberately matured, and they now present it, uninfluenced by any partial or illiberal considerations. They were certainly not ignorant that they had been anticipated in the attempt, though not in the project, by some of their professional brethren; and though, also, aware of the irregularity, (and they hope they may now be permitted to say,) the illegality of the creation of that establishment, they never would have been induced to raise question or difficulty upon the subject, if they had been permitted by that institution to proceed without molestation and opposition in the fair, legal acquisition of their object. It will be for the wisdom of Congress to decide, how far their application is reasonable and proper, and to give due weight to the reasons urged in their behalf. With this explanation, they most respectfully submit their claim to the consideration of Congress.

THOS. SIM,  
HENRY HUNTT,  
THOMAS RANDALL,

} *The Committee, on behalf of  
the original Memorialists.*